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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,335	09/24/2001	Kenneth A. Klarfeld	MET2.PAU.23	2141
23386 7590 08/07/2008 MYERS DAWES ANDRAS & SHERMAN, LLP 19900 MACARTHUR BLVD. SUITE 1150 IRVINE, CA 92612				
EXAMINER				
BROWN, RUEBEN M				
ART UNIT		PAPER NUMBER		
2623				
MAIL DATE		DELIVERY MODE		
08/07/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/963,335

**Applicant(s)**

KLARFELD ET AL.

**Examiner**

REUBEN M. BROWN

**Art Unit**

2623

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Wait Date: 5/22/06

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/22/08 has been entered.

### ***Response to Arguments***

1. Applicant's arguments with respect to claims have been considered but are not persuasive. Applicant argues on page 9, that in the present invention, "it is clear that according to Herz only one set of recommended programs is presented". Examiner respectfully disagrees. Herz (col. 26, lines 45-67 thru col. 27, lines 1-5) discloses an embodiment in which the agreement matrix is recalculated based on which program(s) the customer did or did not watch that were recommended for viewing. After the agreement matrix is updated, then a new list of recommended programs are presented to the viewer, which reads on the claimed '*second list including alternative TV programs available for viewing*'.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Herz, (U.S. Pat # 5,758,257).

Considering claims 20 & 28, the claimed method of displaying a TV program to a viewer, comprising *'processing information indicative of preferences of the viewer to develop a viewer characteristic information profile for the viewer'* is met by Herz, col. 10, lines 6-55; col. 11, lines 15-65 thru col. 12, lines 1-55; col. 14, lines 10-65, col. 15, lines 10-60.

*'Storing the viewer characteristics information profile on a viewer storage device'*, is met by col. 40, lines 21-65; col. 41, lines 1-15; col. 45, lines 9-30. *'Presenting the viewer with a first list of TV programs available for viewing, the programs selected in accordance with the characteristics information profile'*, is met by Herz, col. 23, lines 1-18 & col. 25, lines 49-67, which teaches virtual channels of recommended programs based on the instant customer's profile.

The amended claimed feature of *'receiving feedback input from the viewer after viewing the first list, the input requesting different selections than in the first list'; and 'presenting the viewer with a second list including alternative TV programs for viewing, the alternative list selected in accordance with an alternative characteristics information profile'*, is met by the disclosure in Herz that the system determines if the customer actually watched the video programs that were recommended by the agreement matrix, col. 26, lines 51-62, for the purpose of adjusting the agreement matrix of a particular customer.

If the customer did not select/watch the predicted program(s), then the system adjusts the customer's profile, based on what was actually watched. Therefore the disclosure of Herz, reads on the claimed subject matter, since after the agreement matrix is updated, then the customer would be given a different list of recommended programs, in light of what was actually requested by the customer, see col. 27, lines 1-6.

Considering claim 21, the claimed subject matter is met by Herz, col. 29, lines 1-26.

Considering claim 22, the claimed subject matter is met by Herz, col. 26, lines 21-50, which teaches that a plurality of profiles for different viewer may be stored at the STB.

Considering claims 23-27, Herz meets all subject matter, col. 17, lines 35-65; col. 23, lines 1-15; col. 26, lines 5-65; col. 46, lines 1-20.

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Considering claims 29-31, see Herz, col. 26, lines 1-21; col. 29, lines 1-25; col. 29, lines 30-65 & col 45, lines 20-65; col. 49, lines 1-10.

Considering claim 32, the claimed method for prestige TV programs to a viewer, comprises steps that correspond with subject matter mentioned above in the rejection of claim 20, and is likewise treated. As for the additional feature, of the *'first list arranged without viewer input'*, in Herz the arrangement of the virtual lists are without user input, col. 45, lines 35-45.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A) Graves Teaches updating user profile based on feedback or evaluation; see col. 7- col. 9 & Fig. 2.

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**Any response to this action should be mailed to:**

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P.O. Box 1450  
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**or faxed to:**

(571) 273-8300, (for formal communications intended for entry)

**Or:**

(571) 273-7290 (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reuben M. Brown whose telephone number is (571) 272-7290. The examiner can normally be reached on M-F(8:30-6:00), First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communications and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Reuben M. Brown/  
Patent Examiner, Art Unit 2623